GLENN ANG GEK JIN & ORS.

v.

NORAINI HJ. MOHD. TAHA & ORS.

HIGH COURT, BRUNEI
AM MCMULLIN (COMMISSIONER)
[CIVIL SUIT NO. 148 OF 1991]
18 DECEMBER 1991

PARTNERSHIP: *Registered as limited liability company - Whether a partnership - Arrangements surrounding circumstances and intentions of parties - Whether partner had sold his share - Reinstatement in contract of employment - When allowed.*

On 17 June 1988 the 2nd, 3rd plaintiffs, 4th defendant and two original proprietors of Tanco entered into a partnership agreement. On 25 May 1989 the 1st and 2nd defendants in keeping with the Bumiputera policy were enlisted as directors and the Tanco Marine Technology Sdn. Bhd. was incorporated and registered as a limited liability company. On 13 January 1990 a formal agreement was signed by all the five partners (first agreement). Pursuant to the Bumiputera policy the 1st and 2nd defendants were named as directors and each was issued with one share in the company.

Due to general friction of contrasted personalities, the 4th defendant by letter dated 12 September 1990 notified the company of his resignation. On 6 November 1990 a meeting was held wherein *inter alia* the 4th defendant's resignation was accepted. The 4th defendant did not attend this meeting. But the 4th defendant claimed to have a share/interest in the company and his share in the company was not settled as the amount was in dispute.

Following, the resignation of the 4th defendant, the 1st plaintiff was brought in as a replacement. A new draft agreement was prepared. All the parties signed on various dates a fair draft of the agreement which was dated 1st January 1990 (second agreement). But other relevant documents were signed in escrow. The 4th defendant managed to persuade the 1st and 2nd defendants to accept his contention that he was still a shareholder in the 3rd defendant. It was alleged that the 2nd plaintiff had used vulgar language against and thereby insulted His Majesty the Sultan Of Brunei. On 29 July, letter of dismissal from employment signed by 1st and 2nd defendant were sent to the 1st and 2nd plaintiffs and Betty Leong. The company was at this stage managed by the 1st, 2nd and 4th defendants. The Hong Kong Bank acting within its power under the debentures held by it over the company's fixed and floating assets put the company in the hands of receivers.

Held:

[1] Notwithstanding the corporate identity of the 3rd defendant it lacked the normal shareholding structure and with its two nominal shareholders, to confirm to the Bumiputera policy, the relationship between the parties remained essentially that which it was the outset of the relationship between the partners.

[2] When the 4th defendant was invited to attend the meeting on 6 November, he refused to do. That would have been an opportunity to make it clear to the others that he was merely resigning as finance manager while retaining his interest as a shareholder in the company, but he did not avail himself of this opportunity. When he informed the others that he was resigning from "all positions" in the company, this must surely have conveyed to them that his primary function as finance backer was at end, and with it all further interest in the company save only for what he was to receive in terms of the request in his letters.

[3] The second agreement was intended to and did come to operation immediately after signing. The fact that the share certificates and transfer forms were signed but not dated did not suspend it until the 4th defendant had accepted whatever he was offered in full and final settlement in any claims against the company.

[4] The 2nd defendant, a former personal pilot of the Sultan, finding himself in a position of great difficulty, acted not out of conviction but out of expediency. The dismissal of the 2nd plaintiff, allegedly for cause, he was not in good faith and was therefore a clear breach of terms of the second agreement.

[5] The 3rd plaintiff's dismissal on the only cause of employing illegal labour was in bad faith and in breach of the second agreement.

[6] It was wrongful, in particular, that the 4th defendant did induce the belief that the 1st plaintiff had offered BB$300,000 for the purchase of the 4th defendant's share and that he had reneged on that promise and that he, the 4th defendant had only been offered 30% of net profits. It was this that induced the 1st and 2nd defendants to fall in with him and to adopt his view that the 2nd plaintiff was too powerful on the financial side. The 4th defendant was fully aware of and complaint in - if not the actual instigator of - the resolution to remove the 1st and 2nd plaintiff's as signatories.

[7] It is of course the general rule that the Court will not grant specific performance of contract of service or employment save in every exceptional circumstances. Such circumstances exist in this case.

[Plaintiff's claims allowed. The 1st, 2nd and 4th defendant's counterclaim dismissed with costs.]

Cases referred to:
Prenn v. Simmons [1971] 1 WLR 1381 ***(cit)***
Ebrahimi v. Westbourne Gallery [1973] AC 360 ***(cons)***
British Industrial Plastics v. Ferguson [1940] 1 All ER ***(not foll)***
Candlewood Navigation v. Mitsui Osk [1986] AC 1 ***(not foll)***
Hill v. Parsons [1972] Ch 305 ***(foll)***

For the plaintiffs - Davidson (Rudy Lee with him); M/s. Abrahams Davidson & Co.
For the defendants - Harry Elias (Francis Chiew with him); M/s. Francis Chiew & Co.

JUDGMENT

AM McMullin (Commissioner):

This case concerns the rapid rise and sudden fall in the fortunes of the third defendant company Tanco Marine Technology Sdn. Bhd. as the result of a falling out amongst business associates in what had seemed at the outset a very hopeful venture.

The genesis of the third defendant's company was in a family business registered to trade in the name of the brother and mother of the third plaintiff, Tan Eng Hong. It traded in the name of Tanco and was first registered in 1969. Its principal business appears to have been as a supplier of labour to contractors associated with various companies. It is said to have flourished under the guidance of Tan Eng Hong's father in the years following its registration. But by the time the second plaintiff, John Bromage, comes into the picture in 1989 the father had died and the affairs of Tanco had diminished to a point where it was virtually at a standstill and sorely in need of fresh capital.

The second plaintiff, John Mallory Bromage, a British citizen had lived mainly in Brunei from the year 1976. He has had considerable experience in the field of operations connected with oil exploration and extraction, principally in the business of moving heavy oil rig equipment and dealing with the labour associated with that task. In this capacity he had worked for several years in a company called Sed in South Africa and Iran before coming to Brunei.

Between 1976 and 1982, he was employed as a Barge Captain in Brunei by a company called Reading and Bates during which time he passed some courses in Singapore to augment his professional skills in relation to the prevention of blow-outs. He is clearly a man of considerable technical competence and of an adventurous turn of mind, a factor which may have some bearing upon the temperamental differences that arose between himself and his partners later on.

Between 1982 and 1985 he took time off to construct a yacht and sail it around the world returning to Kuala Belait in 1985. On his return he was once again employed by Reading and Bates as a Barge Captain and completed another technical course in relation to that work.

He resigned from Reading and Bates early in 1988 and later that year came into contact with the fourth defendant, Tan Kee Tai and through him he became aware of the existence of Tanco. He knew that Tanco was a registered business and he thought that it had potential for development by a combination of his own professional skills with its existing goodwill and contacts, provided a fresh infection of capital could be found.

Tan Eng Hong (third plaintiff), then a member of the family firm of Tanco, had some experience in the area of seismic operation connected with the discovery of oil, and in September 1988 he and Tan Kee Tai (fourth defendant) and Bromage went into partnership informally with the original proprietors of the business, the mother and brother of Tan Eng Hong. Bromage and Tan Kee Tai put up BB$40,000 each as initial capital to revivify the business as a going concern.

On 17 June 1988 a formal partnership agreement which had been drawn up by the company's lawyers, M/s. Yu and Chiew practising in Kuala Belait, was entered into by Tan Kee Tai, Bromage and Tan Eng Hong and the two original proprietors of Tanco.

Clause 2.04 of that agreement provided that:

> The profit shall be divided between the partners in the following proportions:
>
> (1) First party (Tan Kee Tai, the fourth defendant) ... 42.5%
>
> (2) Second party (John Bromage, the second plaintiff) ... 42.5%
>
> (3) Third party (Tan Eng Hong, third plaintiff) ... 13%

The original registered owners of the business, the mother and brother of Tan Eng Hong, were to have a 1% share each in the company's profit but were expressly excluded from contributing to or sharing in the capital and for practical purposes they disappear from the picture at this stage.

From then to the end of 1988 various contracts were secured for the supply of labour to contractors with Brunei Shell Petroleum but at this early stage Bromage was already envisaging a broader and more technically sophisticated role for the partnership.

Early in March 1989 he took the matter up with his two active partners and on 7 March they held a meeting at which the name Tanco Marine Technology was proposed by him. Proposals for its future operations were discussed. It was realised by all of them that in keeping with

BSP policy and indeed, as I understand it, with national policy as well, a strong indigenous Malay representation on any Board of Directors was essential. This policy has been referred throughout the trial as the Bumiputra policy.

To that end, therefore, the first defendant Noraini Bte Hj. Mohd. Taha and Major Karim Bin Sapar, the second defendant were invited to join the enterprise. Noraini was a woman known socially to Bromage and to whom he referred as a friend of his family, while Major Karim was a retired Army Officer and Helicopter Pilot who had served as Personal Pilot to His Majesty the Sultan of Brunei. Both of them were acceptable to the other partners as persons of substance who could add something to the partnership over and above the important feature of indigenous identity.

On 25 May 1989 Tanco Marine Technology was incorporative and registered as a limited liability company. Major Karim and Noraini being appointed directors. Bromage and Tan Kee Tai each contributed B$15,000 as its initiating capital. Tanco, the original partnership, continued to exist and for some time further pursued the business of labour supply and, also some building construction work associated therewith.

A formal agreement was drawn up by Matthiew Chiew of the firm Yu & Chiew and was signed by the three former and two partners. It has been referred to throughout the trial for convenience as the first agreement. This agreement was entered into and signed by all five partners sometime during January although it is in fact dated 13 January 1990.

Two nominal shares were issued one to each director and, as in the former case, the equitable interest of each the party was spelt out. The 6th clause of the agreement provides that each of the partners except Tan Kee Tai is to receive a monthly salary, the amount of which is to:

> each party shall in addition receive a share of the net profit of the company (hereinafter called the "incentive" (after tax) as follows:
>
> (a) First party ... 35%
>
> (b) Second party ... 20%
>
> (c) Third party ... 30%
>
> (d) Fourth party ... 10%
>
> (e) Fifth party ... 5%

These were respectively John Bromage (second plaintiff); Major Karim (second defendant); Tan kee Tai (fourth defendant); Tan Eng Hong (third plaintiff); and Noraini (first defendant). Pursuant to the Bumiputra policy Major Karim and Noraini were named as directors and each was issued with one share in the company. The authorised signatories of company's cheques were to be either one of the directors with a co-signatory who could be either Tan Kee Tai or John Bromage.

From the date of the signing of this agreement up to the end of 1989 the two businesses ran in tandem, but the fledgling TMT was the lesser concern at that stage. The building construction side of the Tanco business at this time was engaged in the construction of a building to house 720 workers. Bromage, on the other hand, did some rig moving work for Tanco employing therein his special skill during the same period. At this stage because his share in Tanco (42.5%) was larger than that TMT, he was eager to keep both businesses going.

Eventually however he was persuaded that it was counter productive to have two such similar ventures competing with each other. Moreover the principal aim in forming the new company had been to move into a higher technological level in the BSP connection and at the end of 1989 or earlier in 1990 an opportunity was afforded to do this by the inviting of tenders by BSP for the construction of pilot vessels the purpose of which was to help oil tankers to moor.

TMT put in a bid for this job and was successful in obtaining a 7 year contract (with options for renewal) for the construction and operation of 3 of the larger of 2 types of vessel projected by BSP. These were to be of 1,000 BHP each and were designed by BSP. Early in 1990 the construction of these vessels was commenced in Hong Kong.

By this time and by agreement of all partners Tanco had been wound down and effectively ceased operating late in February 1990. Its assets and contracts were transferred to TMT and its books audited up to 30 November 1989. Thereafter its profits were distributed amongst the partners and its account with the Hong Kong Bank was closed on 15 March 1990 although a time deposit of about B$13,000 continued to appear in the banks book for sometime after.

Tanco had shown a profit over the brief term of its existence under the new partnership and it seems that out of this the B$40,000 contributed by Bromage and Tan kee Tai had been returned to them. The profit made by Tanco in that brief period appears in the statement of shares of partnership's profit for 18 months to 28 February at p. 18 in the defendants' bundle of documents. A figure of half a million is there shown as the net profit. This statement is dated 28 February which is effectively the closing down date of Tanco.

Two accounts were opened with the Hongkong Bank in Kuala Belait and Tan Kee Tai and Bromage each contributed a sum of B$15,000 to the credit of the TMT with the bank on the opening of those accounts.

By June 1990, while the 3 pilot vessels were under construction, TMT had acquired overdraft and bank loan facilities from the bank amounting in all to about B$4 million backed by substantial securities put up by Tan kee Tai, Bromage and Tan Eng Hong in the form of cash deposit. Much the greater part of these were supplied by Tan Kee Tai in Wardley deposits belonging to himself and his wife. There is also a joint and several guarantee by the several partners.

The Duties of the Respective Partners:

By their agreement of 13 January 1990 (the first agreement) the five partners had been allocated specific roles in TMT. Bromage was to be operations manager, Tan Eng Hong, personnel manager, Major Karim, managing director and Noraini company's secretary. These four were to receive salaries. Tan Kee Tai's position in the organisation is designated simply by the word "Finance". Of all the five partners he alone was not to receive a salary.

It would seem that between September 1989 when the original partnership had been formed and right through the period covered by the partnership agreement and thereafter under the first agreement through the early months of 1990, relationships between the partners had remained good and the business prospered. Indeed up to the break in relations culminating in the disastrous events of July and August 1991 the business of the company continued to boom so that on the very threshold of that disaster it was enjoying a turnover of roughly 1/4 million each month.

There is of course a sharp division in opinion between the plaintiffs and the defendants as to where the responsibility for the breakdown in relationship rests and it is necessary therefore to look with some care at the divergent accounts given of it by the two opposing groups. The decisive issue in the case turns upon the question of the validity of the second agreement and the interpretation of its terms together with the consideration of its relationship to the first agreement on which Tan Kee Tai relies in support of his counterclaim and on which the defence in general rely as a barrier against the plaintiffs' claims.

Much of the evidence I have heard, beyond such facts as are held in common between the parties, is of such a contradictionary nature, as rendered by the protagonists of each side, that in resolving the issue of credibility it will be helpful to set out the opposing versions at this point.

The Plaintiffs' Version:

According to John Bromage, who may be regarded as the plaintiffs' principal witness, Tan Kee Tai was throughout little more than a mere investor in the business. He conceded that the fourth defendant did play some part in introducing him to contractors or individuals who were useful in furthering the business both of Tanco and TMT. Beyond that, and the fact that Tan Kee Tai frequently attended the office in Kuala Belait and from time to time and collected lists of the monthly expenditures of the company, the witness was unwilling to accord to him any operational role in the company's business whatsoever. By this account Tan Kee Tai was effectively - indeed solely - what the witness referred to as "the money man" - that is the provider of capital at the start and financial assistance thereafter to secure banking facilities.

Major Karim, the second defendant, he says was very active about the affairs of TMT at the start but later on his attendance at the office became very irregular. The same was true of Noraini, the first defendant. At first her role was purely nominal but later she was in charge of the section dealing with the processing of immigrant labour which consisted primarily in seeing that the papers were in order and in dealing with the Labour and Immigration departments.

The second plaintiff said that friction over company's matters had developed between him and Tan Kee Tai during the year and there had been certain disagreements between them which he did not specify concerning company matters sometime around about July, and by September - they were no longer communicating with each other. He was aware that Tan Kee Tai felt that he was not being sufficiently consulted or involved in running of the business and he began to hear some rumours from other sources about a possible resignation.

The auditors' report for the year ending 30 November 1990 showed that certain of the witnesses' personal expenses such as those of children's school fees and for the rent of his house were being paid out of the company's funds. He said that this had been verbally agreed with the other partners but Tan Kee Tai was unhappy about this as well. There was a general friction of contrasted personalities.

What all this led to was the resignation of Tan Kee Tai notified to the company in a letter dated 12 September 1990. It is in the following terms:

> I hereby give you three (3) months' notice from 15 September 1990 that I shall resign from my current and all positions with the company with effect from 15 December 1990.
>
> I propose that a meeting of the company be called immediately to resolve the following matters:

(1) My aforesaid resignation.

(2) Meeting (a) be held with the company's bankers to discuss and settle all relevant financial matters of the company with the bankers, and the appropriate resolutions be passed in this respect.

(3) Price Waterhouse of Bandar Seri Begawan, Brunei Darussalam be engaged to audit the company's account for the financial year up to 15 December 1990, and distribution of profits be made accordingly thereafter.

(4) Any other matters as deemed appropriate.

Tan Kee Tai had by then enlisted the services of another lawyer and on the next day, the 13th, M/s. Ibrahim Chee writing on his behalf confirmed his intention to resign and asked to be informed of the date of the meeting referred to in the previous letter. A date in October was proposed but Tan Kee Tai informed the company's lawyer Matthew Chiew that he did not intend to go to that meeting and eventually the meeting was held on 6 November. Present were Karim, Noraini, Bromage and Tan Eng Hong. According to Matthew Chiew he had informed Tan Kee Tai of the date of this meeting but was again told by the fourth defendant that he would not attend. According to the plaintiff and to Matthew Chiew the latter was present at the meeting and took a note of what transpired thereat and from those he prepared the minutes later on. It was according to Matthew a brief affair. The resignation of Tan Kee Tai was discussed and accepted and further resolutions of importance were recorded as follows:

3. (a) *Auditing*

That the company's auditors Messrs. Price Waterhouse to audit the books up to 30 November 1990, provided that if Mr. Tan insist on the 15 December 1990, then arrangements be made for the books to be audited up to 15 December 1990.

(b) A copy of the audited accounts shall be given to each party and if satisfied that there are no errors therein shall be signed by each party.

(c) Upon the signing of the audited accounts the company shall pay to Mr. Tan his share of the net profits which shall include the assets of the company.

4. (a) That upon the resignation of Mr. Tan the company and the remaining parties shall not make any communications to any person which suggest either expressly or by implication that the company is in any way still connected to Mr. Tan and Mr. Tan shall similarly refrain from making any such communications to any person.

(b) Mr. Tan shall return all remaining business cards to the company.

At the lawyer's insistance all who had been present subsequently signed the minutes. Both Bromage and Matthew were positive that all present had understood what had been discussed and had agreed, although it is common ground that the meeting was conducted in English which was not the language of first resort for Karim, Noraini or Tan Eng Hong.

From the date of this meeting onwards there was no further series of meetings and phone calls between himself and Tan Kee Tai. Bromage says nothing very much about this period save that he understood from Matthew Chiew that Tan Kee Tai was insisting on 15 December as the date to which the auditing of the accounts was to be taken and, although making some objection to this, eventually he agreed. It is clear however that his agent and spokesman throughout was Matthew Chiew and that the latter was acting on his instructions in dealing with Tan Kee Tai and reporting back to him from time to time the results of those meetings between October and December.

Prior to the meeting, when Tan Kee Tai had met Matthew Chiew in his office on 2 October he had asked him simply that the points raised by him in his letter of resignation should be tabled and considered at the meeting and at that stage said nothing about having a 30% share in the company.

Matthew Chiew kept a note of the subsequent meetings with Tan kee Tai. This note was put in evidence. Exhibit P6. The note is usually cryptic, and the witness himself had difficulty of recalling the exact meaning of some of what is recorded in it. Various matters of a less important character of are mentioned and it is unnecessary to refer to these. What emerges with considerable clarity is that in some four or five meetings with Matthiew Chiew Tan Kee Tai was maintaining a claim to have "a share" over and above 30% of the net profits based upon what had been allocated to him in the first agreement and that he was willing to dispose of this in full and final settlement of all claims on the company. This he would do in terms which varied from B$650,000 plus 30% of the net profits of the company: (meeting with Chiew on 13 November 1990 by which time he already had in his hand the minutes of the meeting of 10 November); to 30% of net profits plus B$250,000 (meeting on 15 November 1990), a day on which he also suggested for B$300,000.

There were further meetings in December beyond the date appointed by him for the taking effect of his resignation when this manner of haggling was pursued. On 24 December he again came to Matthiew Chiew's office and repeated his claim for B$250,000 putting the sum down on this occasion as being the value of his "goodwill" in the business and maintaining also his claim to 30% the net profits. This phrase "Goodwill" was repeated by him four days later on 28 December again in Matthiew Chiew's office and when Mr. Lee of Price Waterhouse was present at his request. At this meeting after complaining that Bromage had not consulted with him for the approval of the company's expenses he repeated the demand for B$250,000 and was told by Lee that he should deal with the company about this.

John Bromage has maintained that throughout this period was acting on behalf of and with the consent of the other partners. He said that up to this the attitude of all of them had been that Tan Kee Tai was due nothing more than the 30% of net profits and assets of the company accorded to him under the resolution of 6 November, and which had been valued at B$54,982 by Messrs 'Price Waterhouse in their estimate of the net profits and assets of the company up to 30 November 1990.

Tan Kee Tai was also asking that the company's accounts should be audited up to 15 December the date of coming into effect of his resignation. In the course of the three cornered exchanges between himself, Matthew Chiew and John Bromage this was eventually conceded. A further audit up to 15 December was conducted by which time and the sum of B$4,429.00 was calculated in respect of the extra two weeks.

At the meeting between Tan Kee Tai and Matthiew Chiew on 22 December the original figure thus augmented and rounded to a sum of B$60,000 was offered to the fourth defendant who was willing to accept it provided that he was also paid B$250,000 the price which he was claiming at that time for his "shares". None of these meetings therefore produced any accord between Tan Kee Tai and Bromage or the other partners.

Already late in September 1990 following the receipt of the resignation letter Bromage had got in touch with Glenn Ang (the first plaintiff) who was a Brunei businessmen known to him and who, following discussions and perusals of the company's accounts, professed himself willing to step into the shoes of the outgoing partner and to substitute substantial security of his own with the Hongkong Bank to replace that of the fourth defendant.

The Wardley deposits in the names of Tan Kee Tai and his wife, together with his guarantee, which had constituted the major part of the financial backing for the extensive overdraft and loan facilities accorded by the bank to the company were in fact released to him by 11 January. By this time Glenn Ang had already deposited with the bank securities considerably more substantial than those withdrawn by Tan Kee Tai.

Second Agreement - Plaintiffs' Version

Once Glenn Ang had been established as the successor to Tan Kee Tai as financial backer of TMT, Matthiew Chiew prepared the draft of a new agreement. His brother James Chiew, whose office was in Bandar, was at that time advising Glenn Ang and the text of the agreement ultimately embodied the ideas and instructions of both Glenn Ang and John Bromage acting on behalf of himself and the remaining three partners.

Drafts of these were given to all the parties at the beginning of January 1991. No objection to its contents was made by any of them, including the first and second defendants, who, though not so well equipped to follow the text, which was in English, as were the first and second plaintiffs, were nevertheless informed that they could consult with Bromage over anything they might find obscure in it.

All of the parties signed a fair draft early in January. Bromage had secured the signature of the others by taking the draft around to them. It was thus signed at different times by the various parties and when returned to Matthiew Chiew he decided to date it 1 January 1990 as a compromise between the actual individual dates of signature, which were not known to him, and because he was aware that the terms embodied in it had been discussed and cleared between the parties prior to that date.

Under the first agreement the only shareholders had been Karim and Noraini, the two named directors, who were given one share each pursuant to the Bumiputra policy. Under the new arrangements these two shares were now said to be held in trust for the other partners and once again they are the only named directors. The agreement does provide for Bromage also being appointed a director, but he never insisted on this and it was never done. The company's share capital was increased by 98 further ordinary shares and these were allocated as follows:

Glenn (first plaintiff) - 30

John Bromage (second plaintiff) - 35

Major Karim (second defendant) - 19

Tan Eng Hong (third plaintiff) - 10

Noraini (first defendant) - 4

By a resolution of the board signed by board of directors on 10 January these shares were allocated to the several owners and were stated to be held in trust either by the first or second defendants. In the event trust deeds in favour of Glenn Ang, John Bromage and Tan Eng Hong were prepared by Matthiew Chiew and signed by the three named beneficial owners and by Major Karim, who in each instrument, engages to hold them in trust for the beneficial owners. These deeds together with the draft of the company's resolution allocating the shares to the three plaintiffs, with their associated transfer forms, were passed by Matthiew Chiew together with the draft of the second agreement to John Bromage early in January. He passed them to the other partners. The transfer forms are undated and the trust deeds bear only the word 'June' without specific date.

They were returned to Matthiew Chiew all of them having been signed by the relevant parties early in January 1991. The company's resolution bears the date 10 January. That date according to Matthiew Chiew was affixed to it by someone in the company's office after the approved draft of the agreement had been signed.

The fact that these several documents were signed by the contracting parties before any dates for their coming into force had been included in the drafts has founded the argument by the defence that all these were signed in escrow merely and that this was because the coming into force of the new arrangements for the company as provided for in the second agreement depended upon a precedent condition *viz*; that the fourth defendant would accept what was offered to him in full and final settlement of all claims against the company, something which, he never did.

This is vigorously denied by the plaintiffs who maintain that the fourth defendant had willingly and totally dissociated himself from all connection with the company by his letter of resignation and his subsequent conduct, and was thereafter solely concerned to extract the maximum financial advantage which he professed to believe was available to him deriving from his association with the company in its post Tanco manifestation through the period covered by the first agreement and up to his date of resignation.

It may be said that at this stage that these curiously untidy and incomplete arrangements concerning the handling of the trust deeds and transfer forms, though it does offer a foothold for the escrow argument, is also susceptible of quite a different interpretation, considering the background against which the parties were maneuvering in forming their contractual arrangements.

Given BSP's adherence to the Bumiputra policy it is perhaps not surprising that a certain dissimulation in regard to the effective power structure of the company was practised by those who were actively concerned with the running of it, in particular John Bromage who clearly was its prime moving and guiding force from the time of his entry into it. So far as the public record of the company and its affairs were concerned it was a company under an exclusively indigenous directorate with the legal interest in the ordinary shares issued by it wholly in the hands of Brunei Malay Nationals.

Thus early in 1991 the position was that the company had been reformed with a new financial backer and a proper share structure. Its business was proceeding and going very well. The three new pilot vessels came into service in the early months of 1991 and were in service under contracts between the company and BSP. The seismic and construction works side of the business was also going well. It is true of course that at this stage the company's credit with the bank had been heavily called upon to cover the construction of the vessels so that its cash position did not accurately reflect its ongoing potential.

Thus, although set fair on the road to success the clouds were thickening over the inter party relationships. By the middle of June according to Bromage his relations with the first and second defendants were still cordial though not so agreeable as they had earlier been. He himself ascribed no clear reason for this though he did complain of irregular attendance by both of them at Kuala Belait's office in the preceding months.

Under Clause 10 of the second agreement the mandated signatories for all company's cheques were: Karim with either Glenn Ang or Bromage; alternatively Noraini, with either Glenn Ang or Bromage. These had been accepted and acted upon by the Hongkong Bank from the opening of two accounts with the bank on the 9 January 1991.

Because of the irregular attendance of the first defendant and second defendant at the company's office the second defendant had adopted the practice of having blocks of cheques signed by either one of them in blank so that they could be made effective by the addition of his own signature when need arose. This practice was queried by Price Waterhouse in their annual report for the year ending 30 November 1990. This in itself would not seem to have been a cause of friction between Bromage and the two directors but that report, in general raises points concerning the management of the company which indicate that the first plaintiff had assumed a very dominant role in the financial aspects of its control, in addition to his discharge of his general duties as operations manager. While, according to him the first and second defendants were quite compliant in this it clearly irritated the fourth defendant who had evinced an interest in the finances of the company by coming frequently to the office in Kuala Belait for the purpose of keeping an eye on its financial affairs.

By Bromage's account of the matter, right up to July of that year there had been no serious disharmony between himself and the first or second defendants and no complaints had been made to him by either of them such as to account for what he regarded as the extraordinary reversal of their attitudes during that month. He had however fair warning of trouble to come in the form of a letter dated 6 June 1991, received by his lawyers from the firm of Francis Chiew which reads as follows:

> We act for Tan Kee Tai of No 32, Jalan Sungai, Kuala Belait, Brunei Darussalam.
>
> Your letter dated 16 May 1991 have been handed to us with instruction to reply.
>
> We are instructed as follows:
>
> 1. By an arrangement dated 13 January 1990, our client was appointed the finance manager of Tanco Marine Technology Sdn. Bhd. (TMT). Further, it was acknowledged that he holds thirty (30%) percent of TMT shares.
> 2. Although our client has resigned as the finance manager on 30 November 1990, he has no wish however to sell his thirty (30%) percent share in the company at all.
> 3. In the premises, our client was surprised and refused to accept the cheque of B$54,982 which was alleged to be the purchase price for his thirty (30%) percent share.

To this the following reply was sent by Mr. Chiew:

> We refer to your telefax received on 6 June 1991.
>
> We agree that the company employed Mr. Tan Kee Tai as its finance manager for which your client received by way of remuneration 30% of the company's net profit.
>
> We do not see how and by whom it was acknowledged that your client holds 30% of the company's shares.
>
> As to para. 3, our letter to your client dated 22 March 1991 very clearly did not offer the sum of B$54,982 as payment for the purchase of your client's 30% share.

The Relations between John Bromage and Karim and Noraini between January 1991 and July 1991

Bromage maintains that his relations with the first and second defendants had been good right up to a date in July 91 to which I shall come presently. But he was not unaware that both Noraini and Karim in particular had formed an unfavourable view of Tan Eng Hong's wife Betty Leong who was acting as his secretary and whom they suspected to be having an affair with Bromage. Sometime in September 1990 they besought him to dismiss her. He refused to do this and there is no doubt that this rankled both with Karim and Noraini. At

the moment the importance of this is that by Bromage's account of their relationship this was the only disagreement over his management of the company's affairs of which he was aware up to July.

Again it was his case that until he received the letter dated 6 June 1991 from M/s. Francis Chiew then acting for Tan Kee Tai he was unaware that Tan Kee Tai was making the claim to having retained a shareholding in the company. He was of course aware that, that at that date there had been a series of meetings between Tan Kee Tai and Matthew Chiew to which I have referred. He agreed that he had heard various large sums of money being mentioned but said that he understood that as merely querying the quantum of the net profit and assets.

His evidence on this part of the case was somewhat cursory but he must have been aware that Tan Kee Tai was bargaining with Matthiew Chiew over the value of something variously described as his "share" or "goodwill" or "reputation".

Plainly Bromage did not perceive this bargaining as a claim that on the part of Tan Kee Tai that the latter was making his total withdrawal from the company conditional upon being paid some such figure. The claim to be "a shareholder" in TMT was only brought home to Bromage by this letter of 6 June. It is implicit in what he said concerning his surprise on receiving this claim that he and the other plaintiffs were unaware that any such claim had ever been made between January and June 1991 although the company's cheque for B$54,982 based on the Price Waterhouse valuation of the 30% of the net profits and assets of the company had been tendered to him in March and refused by him.

Thus, on the account of the second plaintiff, the state of affairs during these months was one of the continued peaceful and fruitful co-operation between all of them right up to June when this letter, from Francis Chiew arrived as an ominous preface to the extraordinary turbulence of July which, he maintained, erupted suddenly to the astonishment of himself of Glenn Ang and Tan Eng Hong.

It is common ground that a meeting between the three plaintiffs and the two defendants took place in Ang's Hotel on 9 July. Once again the evidence of Bromage, both in chief and cross examination was somewhat brief as to this event, which might seem surprising since it is the turning point of the whole story of TMT's debacle. The reason for this however, is I think, that there was not available at that stage of the trial a transcript of a tape-recording of the meeting which later was produced and admitted in evidence. This tape together with the transcript in English taken from it was put in as plaintiffs' Exhibits 10 and 11.

It was a remarkable meeting. It had been called to discuss certain important company's business. But at the outset it would seem to have been concerned wholly with the question of the continued employment of Betty Leong, the first topic introduced. Also on the agenda for that meeting was the question of signing of two debentures mentioned in the agreement and intended in the benefit of first and second plaintiffs.

The matter of Betty Leong was disposed of by a kind of informal vote whereby Major Karim, no doubt in some exasperation, perceiving the opposition of the three defendants to her dismissal, considered that he and Noraini had been out-voted. It is possible to discern from the somewhat incoherent nature of some of the exchanges at this point that the atmosphere had become a little heated.

The discussion then turned to some question of cash flow. There were some pauses in the debate and during one of these, a dramatic interruption occurred when a letter was brought by someone from the TMT office. This is a letter dated 8 July 1991 from M/s. Francis Chiew once more maintaining Tan Kee Tai's right as a shareholder and challenging the payment of

B$54,982 offered to him and seeking an assurance that this was only intended as remuneration for his services as financial manager. But the galvanizing effect which the letter must have had upon on the meeting at that point may be gauged from its closing para. which is as follows:

> 8. Finally we have confirmation from Major Karim Sapar and Noraini Hj Md Taha that they have not appointed you to act on their behalf. On the contrary, we have today received their instruction to act on their behalf on this matter.

John Bromage said that he was wholly taken by surprise by this. In the circumstances that can scarcely be an overstatement of what its impact must have been. It will be seen from the text of the transcript that the reaction of Glenn Ang was immediate and somewhat explosive. For now it was clear that the house of TMT was well and truly divided against itself.

Confronted with this letter the reaction of Noraini and Karim was somewhat confused and discordant. She baldly stated that she had never even heard of Francis Chiew and in this she was not corrected by Karim. Karim himself was challenged to affirm or deny that he had instructed Francis Chiew. His response as recorded is distinctly equivocal amounting only to the brief sentence "No, I only ask." This phrase was not illuminated by anything said by him later during the meeting.

The meeting continued with the discussion of other topics. There was mention of the second debenture which the two directors were reluctant to sign and there were other general company business that was discussed.

At one point Karim raises the questions of the offer Tan Kee Tai's 'share' which, though neither clear nor explicit is clearly a reference to the latter's claim to have some valuable existing right which he can claim from the company. Nothing specific is said but he is at this stage evidently exercised by the idea that something is claimed by Tan kee Tai which may be his proper due.

The tape recorder had been brought to the meeting and operated by John Bromage. He was recalled to give evidence concerning it, since Karim, who professed some knowledge of such matters, was suspicious that it might have been tampered with. This was because of the pauses to which I have referred earlier. Bromage explained that these were due, apart from the one caused by the delivery of Francis Chiew's letter, to some phone calls which interrupted the meeting while the tape still ran on. He told the Court that he had placed the recorder in the centre of the table and let it run throughout the meeting.

The recorder is a small machine of the kind commonly used by business and professional people for interviews and the like, and it must be said that the sound is not very good. But apart from about 5 minutes of incomprehensible matter at the beginning, I am satisfied that someone who was present at the meeting and familiar with the speaker could distinguish most of what was being said.

The transcript, which was made up by John Bromage and someone in his office, runs to 40 pp of single-space typing. There were some question to whether it had been able to cover the entire period of the meeting. On testing it was discovered to run for two hours which according to Bromage, was about the length of the meeting. Tan Kee Tai thought it was three hours but I accept that virtually everything of what was said at the meeting is contained in the transcript.

The tape is important in that it revealed the nature of the relationship between the defendants and the plaintiffs at that stage, and also because although in evidence Karim maintains that he mentioned the figure B$300,000 as being the share which was claimed by Tan Kee Tai no

mention of this appears anywhere in the transcript. And I am satisfied that no such mention was made.

It is perhaps revealing of the uneasy and equivocal nature of the relations between the parties at this point that before the meeting broke up the two directors signed a resolution giving to John Bromage the right to issue cheques up to B$3,000 in value under his sole signature for the purpose of paying wages to employees. This was, at least in part a response to the query which had been made by M/s Price Waterhouse about the pre-signing of cheques in blank, and also to overcome the difficulty that the first and second defendants were often not available to countersign.

In the course of this meeting the directors, Karim and Noraini both expressed a wish to consult further with Tan Kee Tai and it is not in dispute that immediately after the meeting they did foregather with him. On the following day - 10 July - the fact that they by then swung definitely into his orbit was evidenced by a letter from Francis Chiew of that date which notified their formal adherence to his cause:

> We now act for Mr. Tan Kee Tai, Major Karim Sapar and Noraini Haji Mohd Taha.
>
> We are instructed to inform you that they will not sign any legal documents, correspondence, debentures etc relating to the above-mentioned company without our advice. In the premises, you may serve on or direct to us all legal documents, correspondence, debentures etc before execution by our clients.

In this connection it should be noted that in para. 18 of the statement of claim the plaintiffs plead that it was at about this time that Tan Kee Tai had managed to persuade the first and second defendants to accept his contention that he was still a shareholder in TMT.

Again, on 10 July, an extraordinary general meeting of the board of directors of TMT was held at which the following resolutions, signed by both directors were passed (182 bundle D):

1. Both Directors have received and accept confirmation from Mr. Tan Kee Tai (Mr. Tan) on 9 July 1991 that although he has resigned from his position as finance manager, he has no intention to sell his shares of 30% in the company. Further, Mr. Tan has not agreed to rescind the shareholders agreement dated 13 January 1990 between the directors of the company, Mr. John M. Bromage and Mr. Tan Eng Hong. The directors accepts the fact that they have been misled by the operations manager that Mr. Tan intends to sell his shares to Mr. Glenn Ang Gek Jin.

2. By reasons of the above, the agreement dated 1 January 1991 between Mr. Glenn Ang Gek Jin, Mr. John M. Bromage, Mr. Tan Eng Hong and the directors of the company cannot have effect and is accordingly null and void on the grounds that it is based on the misunderstanding and misconception that Mr. Tan Kee Tai was willing to sell his 30% shares in the company and has agreed to rescind the earlier shareholders agreement dated 13 January 1990.

3. Similarly, the resolution passed on 10 January 1991 shall now be declared null and void and will have no effect. All documents signed by Mr. Glenn Ang Gek Jin based on the mistaken belief that he was or will be a shareholders of 30% of the company may be cancelled and rescinded by the said Mr. Glenn Ang Gek Jin.

4. Shares purportedly alloted to Mr. Glenn Ang Gek Jin shall be withheld and withdrawn. The said shares shall accordingly be allotted to Mr. Tan Kee Tai.

5. Mr. John Bromage should personally bear all the responsibilities and liabilities for all costs and expenses incurred in all the unnecessary legal documents prepared with respect to the misunderstanding with Mr. Glenn Ang Gek Jin and Mr. Tan Kee Tai.

6. By the change of circumstances, it is therefore unnecessary for the director of the company to sign the second deed of debenture in favour of Mr. John M. Bromage and Mr. Glenn Ang Gek Jin at all.

It will be seen that the claim that the fourth defendant is a continuing shareholder in the company is repeated.

On the very same day an incident occurred in the TMT office in Kuala Belait which has a strong bearing on the issue raised on the pleadings as to the dismissal of the second and third plaintiffs and Betty Leong.

An employee of BSP Awg Mail went to that office to make a representation on behalf of his brother who, though he was one of the TMT's workers, was currently unemployed and was claiming back wages. I shall return to his evidence in more detail later. What it amounts to is that expecting to find Noraini or second defendant he found instead a man not known to him but who he identified in Court as John Bromage.

He was disconcerted to see a woman sitting on this man's knee who, upon his entry, got up and left the room. He nevertheless bade him good morning and asked to see Noraini or Tan Eng Hong. He was told that they were not available and was then dealt with by Bromage himself. He put his brother's case to the plaintiff but according to him was dealt with rudely and abruptly in the course of exchanges during which Bromage lost his temper, used vulgar language and ultimately uttered an expression which he regarded as being a direct insult to His Majesty the Sultan of Brunei.

The difficulty with the evidence here is that neither in the examination-in-chief or cross-examination were details of this encounter elicited from the second plaintiff. From a statement later made by him to the police on 30 July it appears that his contention was that he merely informed Awg Mail that he should refer the matter to Karim or Noraini.

It is I think important to remember that at this point Awg, Mail was primarily interested in his brother's case. The latter had remained unemployed although in Awg Mail's opinion there were off-shore positions on ships, which should have been available to him in place of workers with no proper work permits. Clearly he had no assistance in this matter from John Bromage and he was annoyed. I am prepared to believe that there was a confrontation of some sort and that the second plaintiff may have been somewhat testy and used language that displeased Mail for clearly he left the office greatly incensed and went at once and made a complaint to the Labour and Immigration Department about the employment of illegal workers on TMT vessels. He had, it appears, discovered the existence of such people by getting information from various Marine Captains of vessels when together with them on social occasions at his home prior to making this report. As a result five such workers were arrested the following day.

Awg Mail then went on duty off shore until the 20 July. On that date he returned to the TMT office for the purpose of getting payment of his brother's wages. Noraini and Karim were there. He says that he made a complaint of about what he had seen in the office on the 10th and about Bromage and the insult he claimed to have heard the latter utter on that day. He said that Karim was angry and said he would enquire about the matter. He then pursued the complaint about his brother's wages with Noraini but got no satisfaction from her. He was then permitted to use the services of a clerk in the office who typed out a letter of complaint at his dictation. The important part of this letter is contained in the second and third para., an English translation of which is as follows:

Then Mr. John Bromage asked me to return on Saturday (13 July 1991) but when I told him that was a public holiday, he got angry again, used the word 'shit' once more and told me to come back on Monday (15th July 1991) and immediately I told John Bromage it is a public holiday. He asked what holiday again, to which I replied it was His Majesty's Birthday. Mr. Bromage then in his angry tone said 'What A Shit Bloody Sultanate Birthday'. I too got angry and said to him You Don't Shit My Sultan.

My conversation with Mr. John Bromage ended abruptly because Mr. Tan who Mr. John Bromage said on leave suddenly came in and I immediately told him about Mr. John Bromage's remarks and that I definitely will pursue this matter.

I hope Dato in your good office will take firm action because 'whites' such these should be deported from this country. Since Mr. John Bromage does not respect His Majesty we do not require such persons in Brunei. I wish to convey a thousand 'thank you'.

On 22 March he distributed this letter to various authorities in Kuala Belait including Police, Labour and Immigration. A copy was also given to the TMT office.

Major Karim saw this letter and became greatly agitated about it. He had a meeting with Bromage at the office of 25 July when, he maintained, Bromage was in contrite mood and wished him to cool matters and was even willing to apologise to Awg Mail. This was denied by the second plaintiff who referred to that meeting as a last-ditch effort to avoid a breakdown in relations. All the signatories of the second agreement were there. Karim says that Bromage offered to resign but although the latter admitted that the possibility of his resigning was raised, he adamantly refused to do so.

On the same day the second defendant addressed a letter to Bromage which was in the following terms:

As you well know, the last two weeks have been very unpleasant and hectic for me. The cause of which arose from:

(i) The arrest of five of the company employees working illegally in Brunei Darussalam; and

(ii) The unfortunate incident on 10 July 1991 which you were alleged to have insulted the Sultan of Brunei by Awang Mail bin Hj Abd Samad.

As the operations manager of the company, it is my understanding that you may be charged with the criminal offence of permitting the five (5) employees to work illegally. The situation have been seriously aggravated by Awang Mail making complaint against you to the Belait District office.

After discussion held between myself and the various government authorities, it have been tacitly suggested to me that as the managing director of the company I should dismiss you summarily in accordance with Clause 4 (c) of your employment contract. It is my understanding that if the company do not dissociate themselves from you, action will be taken against the company instead.

I have given a lot of thoughts to the matter. I can see no solution other than agree with your suggestion today that you should resign from the company.

I hope you understand that I have taken this decision with great reluctance and pray that you will grant me your full co-operation in the interest of the company.

Between then on 29 July there was a hurried exchange of letters mostly by fax and registered post.

On 26 July a letter signed by both directors was sent to Hongkong Bank purporting to withdraw the mandate of the first and second plaintiffs as signatories of cheques. This drew

an angry response from the first and second plaintiffs on whose behalf of Matthiew Chiew wrote to Francis Chiew, the lawyer then representing Tan kee Tai, the following letter:

> We act for and on behalf of John Mallory Bromage and Glenn Ang Gek Jin in respect of the abovematter.
>
> Our clients have informed us that the 2 directors of the abovenamed company, Tanco Marine Technology Sdn. Bhd. (the company). Mej. (B) Karim bin Sapar and Noraini binti Hj. Mohd. Taha, has sent a letter to the bank to terminate our clients authority to countersign for the company's accounts as mentioned above.
>
> We have also been instructed that the letter to you is in breach of the agreement dated 1 January 1991, and signed by all the parties named therein of which Mej. (B) Karim bin Sapar and Noraini binti Hj. Mohd. Taha together with John Mallory Bromage and Glenn Ang Gek Jin are partners. We are made to understand that you have a copy of the said agreement. If you do not, we would be happy to furnish you with one.

Matthiew Chiew on the same day wrote to the bank requesting the manager not to implement the purported charge of mandate. Reference was made to the second agreement which, it is said, would be breached by any such implementation. The concluding two paras of the letter are as follows:

> Furthermore, our client are also the beneficial owners of a total of 65% of the total issued share holdings of the company. The trustee for their shares is Mej. (B) Karim. Our clients instructs us to inform you not to implement the said letter of Mej. (B) Karim bin Sapar and Noraini binti Hj. Mohd. Taha. Our clients, as beneficial owners of their shares, have also instructed the Trustee, Mej. (B) Karim, that he should convene a meeting at short notice to revoke the letter sent to you, the bank.
>
> As such, our clients would be grateful if you could hold the matter until the matter can be resolved amongst the shareholders and the beneficial owners of the shares.

By this time the bank had become thoroughly alarmed by the turn events had taken in the affairs of a company hitherto regarded by it as a sound financial risk. Although the company was in a generally healthy state with 16 good ongoing contracts, at about this time its credit facilities had been very heavily drawn upon and the bank was obviously worried about the safety of its own investment. Accordingly both TMT accounts were frozen and the directors of TMT were notified of this by a faxed letter on 27 July. This drew a protest from the directors by letter dated the 29 July but the accounts remained frozen.

On the same date, 29 July, letters of dismissal from employment, signed by both directors, were sent to Tan Eng Hong, Bromage and Betty Leong. Purportedly this was done pursuant to a resolution passed by both directors at an EGM held on the 27th. Each of the employees is offered one months pay in lieu of notice. The dismissal of Betty Leong is a simple dismissal with no cause assigned, presumably in accordance with the terms of her contract with the company.

The dismissals of the second and third plaintiffs are based upon alleged default or misconduct, the hiring of illegal labour in the case of the third plaintiff. In the case of Bromage four complaints are made, including the hiring of illegal labour, but the principal cause is clearly the alleged insult to His Majesty the Sultan.

By this stage M/s. Abrahams Davidson and Co. had replaced M/s. Yu & Chiew as legal advisers of the first and second plaintiffs. On 30 July they succeeded in getting an interim injunction from the Court registrar restoring Bromage to his position as operations manager. Copies of this order were directed to the defendants and the Hongkong Bank. This order remained in force until the injunction was lifted by order of the Chief Registrar on 6 August.

In the meantime Bromage, acting on his mandate of 9 July, signed a number of cheques for sums up to B$3,000 amounting in all to something over B$56,000 odd. These sums he said were expended upon wages of workers.

It is pleaded in para. 28 of the amended defence and counterclaim that the sum of B$71,000 odd was converted by the plaintiff for his own use. This was an unfortunate not to say reckless pleading and it is an issue which can be disposed of at once since no evidence whatsoever was led to support it and the two cheques in the list that are greater in value than B$3,000 (amounting between them to over B$14,000) were actually countersigned by the first and second defendants.

On 29 July M/s. Abrahams Davidson had written to Francis Chiew to protest the dismissals as wrong and in breach of the terms of second agreement, and threatening legal action. By this time the lines of battle has been drawn and litigation was imminent. The two bank accounts were again frozen. The company was at this stage being managed by the two directors and Tan Kee Tai but due to the traumatic events of the previous few weeks the company was by mid-August clearly in trouble. The second plaintiff Bromage, had quit the office pursuant to the peremptory terms of his notice of dismissal. He had also been warned by letter not to return to the office and he never did so.

There were further endeavours by the lawyers for the first and second plaintiffs to contrive some form of compromise between the parties. And as late as 19 September pursuant to a suggestion of the Chief Justice in proceedings in the related action, 157/91, an endeavour was made to draw Bromage back into an *ad hoc* arrangement whereby he would sign cheques under the original mandate. Some of these were presented to him but he refused to sign on the grounds that the documentation accompanying the cheques was insufficient. He agreed that he had been invited to consult with Miss Choy of TMT on this, but said he would be unable without consulting various files and books and records of the company to sign for sums which could be as high as B$70,000. There may of course also have been in this an understandable element of grievance and wounded pride on the part of a man who, maintaining innocence in the face of the charges against him, had been peremptorily removed from the office and position in which he had for several years, by common assent of his associates, borne the major part of the company's entire operation on his own shoulders.

It remains true that the failure to effect any compromise in this matter had a great effect on the company's business. The contract with BSP, the most valuable of TMT's contracts, was eventually lost as were building contracts in Jerudong and Kota Batu.

Later in September the bank acting within its powers under the debentures held by it over the company's fixed and floating assets put the company in the hands of receivers where it presently rests. At the present time TMT apart from any other claims which may be outstanding against it is in debt to the bank approximately BB$4 million.

The Defence Version; Fourth Defendant

Tan Kee Tai's case stands under the initial difficulty that the case as pleaded is directly at odds with the manner in which it was presented to the Court. Paragraph 7 of the amended defence of the fourth defendant reads as follows:

> When the fourth defendant resigned from his position, he did not intend, or agree to the sale or transfer of his shareholding in the third defendant to any party whatsoever.

But the entire thrust of his evidence was that up to the altered attitude evidence by the letter sent on his instructions on 6 June, he was endeavouring to realise the value of something which he regarded as a legitimate claim upon the company's resources through

all the period of his association with it, right onwards from the Tanco days, through the partnership agreement and the first agreement, right up to his resignation. This as I understand it was based upon the idea that from the outset of his relations with Bromage and Tan Eng Hong, Karim and Noraini he had brought to the common venture, by virtue of his status as a well known businessman, and by virtue of his contacts generally, a form of benefit or advantage which he has variously described as his "share" of his "goodwill" or his "reputation". This has persisted throughout from Tanco onwards and, in his eyes, it carries a money value which he has variously estimated between B$250,650 and B$650,000, eventually settling in the region of B$300,000. It is the major burden of his evidence that in return for such sum, plus net profits and assets he would have been willing to relinquish any further claim.

He may quite genuinely have believed that taken over all: his financial backing of the company, his status, his services, his contacts he had been worth much more to the company than the sum that was tendered to him. One has some sympathy with that view. But if that was his true belief, his proper course was to pursue it with the company by way of negotiation, and if disappointed, then by legal action if necessary, taken in his own right. He chose not to do that, although he had been threatening to take action when he met Karim sometime in March during a social call of the latter. Instead, he sought to force open the door which in the estimate of his associates he had firmly closed behind him by his resignation and subsequent conduct, and thus return to a position of greater power in the company. He made an admission in his evidence which roughly amounts to that when he said that he would like to be in the position of the financial manager in the fullest sense with John Bromage - for whom he professes a continuing admiration as a good operations man - held strictly to that role.

This is a crucial change of attitude from that shown during the bargaining period and on balance it seems to me that in resigning and taking out his security as he did, he was truly intending to cut loose completely from his associates while reserving the right to question whatever was offered to him should that prove to be less generous than his own estimate of his worth to the common enterprise over the many years of their association.

In coming to that view there are a number of consideration which seem to me compelling. But before considering those, I should say that I am in agreement with Counsel on both sides in this case who wish me to view the arrangements of the parties from the partnership agreement onwards in the light of *Prenn v. Simmons* [1971] 1 WLR 1381, and thus consider the total matrix of surrounding circumstances showing the attitudes, expectations and intentions of the parties.

Mr. Davidson argues that, notwithstanding the incorporation of TMT, the reality remains a partnership beneath a corporate umbrella by analogy with what was held by the Court in *Ebrahimi v. Westbourne Gallery* [1973] AC 360. He asks that the actions of the parties of the present case should similarly be so considered. That seems to me to be entirely appropriate way of looking at the matter. Notwithstanding the corporate identity of TMT it lacked the normal shareholding structure and with its two nominal shareholders, to conform to the Bumiputra policy, the relationship between the parties remained essentially that which it was at the outset of the relationship between the partners. And that I believe is how the fourth defendant himself regarded it.

Thus, in the meetings with Matthiew Chiew on 13 and 15 November and on 24 and 28 December, there is no suggestion by Tan Kee Tai that he is a shareholder in the company. What was going on was a bargaining concerning the value of his 'share' and his use, as

equivalents, of the terms "goodwill" and "reputation" indicate that he was in the position of a retired partner exerting some claim for valued services over the whole period of the association.

I am satisfied was invited to attend the meeting on 6 November and that he refused to do so. That would have been an opportunity to make it clear to the others that he was merely resigning as finance manager while retaining his interest as a shareholder in the company, but he did not avail himself of this opportunity. He was given a copy of the minutes and I do not for a moment accept his story that he was too busy to read them thoroughly or have them explained to him. He must by then have realised that he was being offered something more than the mere 30% of the net profits of the company which had been mentioned in his letter of resignation, and which appears in Clause 6 of the first agreement. In other words he was being offered something more final, something more like what would be offered to be a party in the process of a winding-up.

Then on 21 November he has a letter from Matthiew Chiew which says that the agreement is rescinded and he makes no protest written or oral to that statement.

It is very significant that he had been pressing the manager of the Hongkong Bank at Kuala Belait for the release of his securities early in December and yet on 24 December and 28 December he is still bargaining about his share or goodwill and is making no claim to be a share holder in the company.

Then again his insistence on having the books audited up to the date of his resignation - 15 December - is much more in keeping with the attitude of one making a final account than that of a shareholder with expectation of similar payments at the end of subsequent financial years the relevant date being 30 November.

It must also be remembered that he was the only one of the five associates who had not established executive function in the company, and who did not receive any salary. When he informed the others that he was resigning from "all positions" in the company, this must surely have conveyed to them that his primary function as financial backer was at an end, and with it all further interest in the company save only for what he was to receive in terms of the request in his letters.

It seems furthermore unlikely that he would wish to remain a shareholder in a company largely in the control of a man whom he professed to believe might one day run off with a substantial part of the company's funds. Nobody of that opinion would be willing to leave his large security with the bank, and indeed he did not do so. Also he knew by December that his securities were going to be replaced by somebody else. In taking out his own he gave a strong indication that he was totally withdrawing from the company whilst retaining a claim to the value of his "share" or "goodwill" or "reputation". On 21 March when he was offered by Matthiew Chiew the revised figure of B$60,000 for the net profits and assets he was willing to accept that provided that his "goodwill" was also paid to him, and on that date he says that Noraini and Karim were agreeable that he should have such a payment.

It was about this time that he met Karim to whom he showed the voucher which had been attached to the cheque for the B$54,928 which contained the words payment of "Final Dividend for outgoing partner". It was on this occasion, in complaining about those words that he told Karim that he had been offered B$300,000 by Glenn Ang who had not honoured his bargain, and furthermore he conveyed to Karim the impression that the sum offered was merely for net profits. It is for this reason that the figure of B$300,000 ran like a refrain through

the evidence of Karim in dealing with this aspect of the matter. But I am quite satisfied that no such offer of that figure, or indeed of any other figure, had been made by Glenn Ang or Bromage through the mediacy of Matthew Chiew or otherwise to Tan Kee Tai at any time.

The fourth defendant had not seen Karim or any of the other partners between his withdrawal from the company and the time in March when he spoke with him and I am satisfied that it was on that occasion that he set in train the whole series of events which resulted in the split between the partners. It was only after this that Karim became concerned about whether Tan Kee Tai had been fairly treated. No doubt it was because of this generous belief that he was persuaded in the end to take himself and Noraini over to Tan Kee Tai's side. Even had he known it, it would I think have been to him a lawyer's nicety, of no particular significance that by then Tan Kee Tai had wholly altered his original contention and was claiming to be, and to have been throughout, a persisting shareholder in the company.

Unfortunately, this generous concern has led Major Karim into fortifying his evidence in a manner which is not acceptable. Thus, he claimed that he had been told by John Bromage on more than one occasion that Glenn Ang had promised to buy Tan Kee Tai's share for B$300,000. Firstly, he said that at the end of September he and Noraini had told Bromage that Tan Kee Tai must be paid and Bromage said that he would ask him. Then on 6 November at the meeting to consider the letter of resignation, he said that John Bromage had told him that Glenn Ang had agreed in principle to pay whatever the value of 30% of his share was worth. Again he said that after the signing of the agreement he was told straight out by Bromage that Tan Kee Tai was going to be paid B$300,000. At another point in his evidence he said that, after the letter of resignation was received in September Bromage told him that Tan Kee Tai was to be paid B$300,000. None of this was ever put to Bromage. It was completely denied by Glenn Ang and nothing of the sort was said by Matthiew Chiew. They both seemed to be eminently honest witnesses and I accept their evidence.

Whatever his motive may have been, it must be said that these statements call the second defendant's credibility into question.

So far as Tan Kee Tai is concerned I can only conclude that if the company had been in a better cash position at the time, and he had actually been offered, as part of the net assets and profits, a sum considerably greater than that which he was offered, something in the region of the B$300,000 with something for net profits as well, there would have been no further question and the trouble culminating in this suit might never have arisen.

In behaving as he did he led his former colleagues to believe that they could safely pursue their new design without protest from him and for at least six months that is what they did.

The Defence as Rendered by the Other Defendants

This rests, so far as the validity of the second agreement is concerned, wholly on the evidence of Major Karim. From the first defendant, Noraini, I have heard nothing at all, but I will assume that she would be unlikely to dispute the case as presented to the Court by her co-director. Up to a point I have considerable sympathy with Major Karim. I accept that his first language not being English, it was likely enough that he might be in doubt about some of the words in the second agreement. Help on that score was admittedly available both from the lawyers and from Bromage.

The witness laid heavy emphasis on the proviso to Clause 5A of the second agreement which reads as follows:

> And it is further provided that in the case of Glenn, he shall not be obliged to provide the said security (whether money or moneys worth) for the said lien/ collateral unless and until Tan Kee Tai shall have first accepted the accounts audited by Price Waterhouse and acknowledges that the sum agreed to be paid to him is in full and final settlement of all moneys due to him under the said Formation agreement and the company and that he shall not make any other or further claims under the said formation agreement or against the company.

He says that he had discussed this with the second plaintiff and was given the assurance that the coming into the force of the agreement depended on Tan Kee Tai being fully and lawfully discharged and that the affair would be handled in a smooth and honourable way. To my mind Clause 5A says nothing of the kind. I accept Mr. Davidson's argument that this was put in at the instance of Glenn Ang as a protection for himself should the whole scheme go awry. In so far as it creates a condition precedent that is for the benefit of Glenn Ang alone. In the event he did not rely upon it and although the fourth defendant had not accepted what was offered to him as a final settlement, Glenn Ang nevertheless went ahead and put his security in place.

Bromage was not entirely sure at one point in his evidence as to whether or not he may have given Karim an explanation of the meaning of this proviso which was to the effect that the agreement would not come into effect until Tan Kee Tai got out under the terms thereof. It is some testimony to the honesty of the witness that he was willing thus to dilute very positive evidence given earlier, when he said that everybody was satisfied that there was no question of the agreement hanging upon any preceding condition. I think there may have been a confusion here about the question being asked because of the whole tenor of his evidence on the point up to that was that everyone was certain that the matter would be handled properly and that Tan Kee Tai would accept what was offered to him by way of his share in the total profits and assets of the company.

It may be that the proviso to Clause 5A was explained to Karim in terms that led him to believe that Glenn Ang would not come in until Tan Kee Tai went out, and that thus the implementation of the agreement would be suspended until that occurred. But this could not have created such a mistaken impression in Karim's mind as to support the contention that he had been misled into signing due to a false representation of fact, since in fact Tan Kee Tai's securities had been replaced by that of Glenn Ang early in January and Tan Kee Tai had withdrawn his securities, the guarantees on 9 January and the Wardley deposits on the 11th. So what the second defendant is complaining about here is that, viewed by hindsight, Tan Kee Tai has not in his opinion been "duly and honourably" paid his share. This does not involve the second plaintiff in the making of a false representation. It was Bromage's intention that this should be done and it remains his opinion that it has been done. Major Karim cannot now say, "if I had known Tan Kee Tai would not be fairly paid off, I would not have signed." This is an idea of his own which has occurred to him much later, long after he and his co-director and the others had cooperated happily in making the new agreement work.

Nor can I find that he was misled by the text of the second agreement itself concerning the rescinding of the former agreement. The word rescind is something of a lawyer's term and perhaps it was not the happiest usage in the circumstances. But I am satisfied that what was conveyed to Karim was that all the other parties, except for Tan Kee Tai, were expressly of the opinion that the former agreement was to be of no further effect, and that by resigning in the way he did and taking back his securities, Tan Kee Tai had in effect come to the same opinion concerning it.

There is nothing whatsoever in the evidence to support the claim, made in the further and better particulars given by the defendants on 28 October, to the effect that the false representation alleged to have been made to Major Karim and Noraini by Bromage was made sometime in December 1990 at the office of TMT, and was to the effect that Tan Kee Tai agreed to sell his shares in the company to Glenn Ang Jek Jin and to rescind the agreement dated 30 January 1990.

Moreover this conflicts with the particulars in para. 8 of the amended defence, where the false representation is said to have been made at the meeting on 6 November. That will be apparent from what has been said already concerning the bargaining in which Tan kee Tai indulged with Matthiew Chiew between October and December. The pleas as to misrepresentation, condition precedent, and mistake must fail.

The fact that the share certificates and transfer forms were signed but not dated has been used by the defence in favour of an argument that these were held in escrow and that this was a further indication that the agreement itself was going to be held in suspension until Tan Kee Tai had accepted whatever he was offered in full and final settlement in any claims against the company.

I can find no substance in that argument. As I have said the reason for them not being dated can well be explained as being a further example of the general desire to comply with the Bumiputra policy, but in any event the dating of them depended wholly upon the will of the relevant parties and not upon some future event which was to occur independent of them. So far as the escrow argument is directed against the validity of the agreement it must in any case fail since in effect I have held in that agreement was intended to and did come to operation immediately after signing.

I can find no more substance in the plea (para. 16) of the amended defence and counterclaim where it is denied that the second defendant held the shares of the first as a trustee or at all. The fact is that the three trust deeds executed in favour of the first, second and third plaintiffs as pleaded in para. 12 of statement of claim remain confided to the trust of the second defendant.

The Dismissals

Of these the most important is obviously that directed at John Bromage who was in effect the company's chief executive officer. The Directors purported to act under a clause in a labour contract which he had with the company and under which he was entitled to one months salary in lieu of notice and a return air ticket to London. Under that contract it would not be necessary to assign reason for dismissal at all. But the plaintiffs maintain that the terms of that contract are in any event overridden by the positive terms of the second agreement itself, and in particular by para. 11E which is in the following terms:

> It is agreed that if any of the parties hereto as is specified in this Clause 11 shall fail to discharge carry out perform execute or shall omit to discharge carry out perform execute any of the function, duties or responsibility which are now or are from time to a time assigned or vested in them by the parties hereto then the other parties to this agreement shall give the party who fails or omits to discharge carry out perform or execute any of his function duties or responsibilities a notice in writing which shall state the matter failed or omitted and if the party who fails or omits does not within a period of three (3) months make good or remedy the failure or omission then the party so failing or omitting shall be deemed to have terminated his employment with the company and shall also be deemed to have retired from the company and in such event Clause 1(h) shall be applied to the party deemed to have retired.

Whatever their view of the validity of the second agreement may have been at that stage, it seems clear from this manner of approaching the problem of dismissing John Bromage, that the directors were satisfied that they must show cause.

Five reasons were assigned for the dismissal. Firstly, that he was slow in operating the Bumiputra policy of employing local labour. Secondly, that he had been in contravention of Immigration and Labour law because of the presence of five illegal persons who had been repatriated as a result of the researches of Awg Mail. Thirdly, that he had put the company to risk because of his manner of dealing with the purchase of certain barges from a company called IMES concerning which some question of fraud had been raised. Fourthly, a general complaint about his conduct and use of foul language in dealing with BSP contractors. Finally, a complaint that he had permitted the employment of unqualified personnel and therefore did not care for the reputation of the company.

As to the first and fifth of these, the second plaintiff says that he had never had any complaint from BSP before; as to the second he said it was not his or Tan Eng Hong's duty to deal with the labour and immigration people as that was the duty primarily of Noraini.

He conceded that there had been trouble about the purchase of IMES barges but said that these matters had been sorted out by his lawyers with the officials of BSP. There is no evidence to the contrary.

I agree with the Counsel for the plaintiffs that the true core of these complaints, without which no question of dismissal would have arisen, is to be found in the words which appear under the fourth heading "a serious case in point was the incident of 10 July in which you are alleged to have insulted the Sultan of Brunei with foul four letter words.

It is of interest that in relation to the fourth complaint the only allegation of rude behaviour other than the alleged insult to the Sultan, comes in the form of a letter from a company called Voest Alpine and it is in effect a comparatively mild complaint about the failure to improve services in the catering department. As against this a letter was received by Tanco on 5 August from BSP stating that BSP has at all times found the operations manager Mr. Bromage to have discharged his duties in a courteous and professional manner. That is of some interest in relation to what follows.

One can have some sympathy with Major Karim in the situation which had arisen. He found himself between a rock and a hard place. On the one hand he had the company's interests at heart and on the other he had a serious allegation concerning disrespect to His Majesty the Sultan aimed against its most important executive officer. He told the Court that he believed what Awg Mail had said in his letter. He believed him because he thought that he was a man of substance, not a mere labourer, although in fact he had never met him before. He said that he had never challenged John Bromage or asked him whether the accusation was true. This conflicts with the evidence of Bromage who said that he had asked Karim if he believed it and was told that he did not.

This issue has given me a great deal of thought. Had I been trying this case in some other jurisdiction within the Common Law countries I might well have felt, that it was at least likely that some offensive language had been used of the kind described, even if the conversation had not been a particularly heated one. In many Western countries such expressions, regretably, have come to be considered as little more than mild solecisms of a kind to be deprecated but to which not very much in the way of moral disapprobation would attach.

In the circumstances of Brunei, however, I readily acknowledge that language of this kind used publicly in respect of his Majesty the Sultan, even if no insult whatsoever was intended, would inevitably be held to be a most serious outrage to local sensibilities and a legitimate cause for public censure. Mr. Elias indeed put to me the proposition that, under what he terms Brunei Common Law, in such circumstances as these, a dismissal would necessarily follow. By that I presume he means the Common Law as it is embedded in the customary attitudes and morals of the people. Somewhat as, in the United Kingdom, the custom of the people is generally supposed to be mirrored in the legislation passed by parliament.

Whatever be the truth about that there is no doubt that Major Karim took the matter so seriously that he went to the several departments concerned and made enquiries from them, all of them having received Awang's letter, and got advice, so he says, that he should discharge the employee. He later caused notification to be sent to the various addressees of Awang's letter accompanied by a copy of that letter informing them that Bromage had been dismissed.

The point here however is whether in truth the insult was uttered. Bromage himself felt seriously enough threatened by this allegation to go to the police station in Kuala Belait on 30 July where he made a statement to the effect that he had never uttered any such insulting language.

In this matter, it is of no small importance what Major Karim himself believed. I have noted that he says he did not challenge John Bromage, despite the latter's evidence that he had assured him that he believed him. And I have to reckon with the real possibility that what he felt was that, irrespective of whether the complaint was true or not, he must act upon it or have the company suffer severe damage in its relation with its contractors, principally BSP. It is in connection with the latter company that we have evidence of a very telling sort.

BSP had already received a copy in English of Awang Mail's complaint and had been informed of the intention to dismiss John Bromage. The letter from BSP to Tanco to which I have referred above had also included a tribute to that company in the following terms:

> Tanco Marine Technology is one of Brunei Shell's best performing marine contractors in respect to safety, reliability and performance of its vessels. The continued satisfactory operation of Tanco Marine Technology is of prime importance for loading of shipment of oil and gas.

Clearly the news that John Bromage had been dismissed had excited a great deal of concern at BSP. Accordingly Major Karim was invited to an informal meeting with a number of officials of BSP on 26 July where one of the interviewers put it to the Major that since Bromage had been in Brunei for about 12 years and was aware of local sensitivies he, the interviewer, would not believe that Bromage would have said any such thing, and that he would believe Mr. Bromage if he said he did not say the words attributed to him. In reply to this Major Karim advised the assembled officials that he did believe Mr. Bromage, but added what else could he do as the letter have been given to the District Officer and the future of the company was at stake. The Government he said would be forced to act and if the company did not discipline Mr. Bromage then the Government would take action against TMT.

At a similar meeting on 8 August he was asked if the real reason for the break up of TMT and for Major Karim asking Bromage to leave was that Bromage had said something about the Sultan. To this Karim replied that that was the reason. Later on, in the same meeting, he confirmed that he did not believe that Bromage had said any such thing. But he added that the person who sent the letter would swear on the Quraan that it was true even if Bromage was speaking the truth. He was then asked if he did not think that it was a very big step to

dismiss the operations manager for something he did not believe to be true. And to this he replied that he did not sack him until after Bromage had taken legal action. This was a reference to the injunction which had been obtained on 30th and was therefore in fact after the purported dismissal of Bromage.

Confronted with this matter in Court Major Karim said that he was looking after the interests of the company. He did not retract his statement that he believed Awang Mail.

It is of interest in this connection that Awang Mail himself although according to him grievously shocked by what had been said to him, went to the Labour and Immigration departments at once merely to complain about the situation concerning illegal labour. This was of course in connection with the difficulties which his brother had encountered in TMT. He was an angry man, and it was not until he returned some ten days later from his duty off-shore that he saw fit to commit to writing the complaint which he made concerning the alleged bad conduct of the second plaintiff.

In such a matter one looks wherever one can for indications supporting an opinion either way. I think it is not without some significance that, in the heated meeting at Ang's Hotel on 9 July, after Francis Chiew's letter had set the cat among the pigeons, the only expletives used by anyone are attributed to Glenn Ang and Noraini herself. Indeed as far as the transcript goes, the cooling voice appears to be that of John Bromage who kept trying to draw the meeting back to business.

On all of this I have come to the conclusion that Awang Mail, an angry man who felt he had been discourteously dealt with, and who moreover had got no satisfaction of any kind from the company concerning his brother, brooded over the matter and had decided in the end to fortify his impression of the manner in which he had been dealt with by including in it something which he knew would be of maximum destructive effect.

In this connection it is not without some significance that amongst the exchanges between Karim and those interviewed at the BSP premises one of the speakers injected the remark that BSP received letters everyday from people with a grudge complaining that the Sultan had been insulted and on investigation it was mostly proven not to be true. To this Major Karim agreed. He made it clear to that assembled company that although he believed Bromage there was nothing he could do because of all the letters that had been sent around. At another point in the interview he agreed that the matter of the illegal workers was not a complaint upon which alone they would have acted to dismiss Bromage.

From all of this it is plain to me that Major Karim, a former personal pilot to the Sultan, finding himself in a position of great difficulty, acted not out of conviction but out of expediency. The remaining complaints were clearly make-weights.

I have given this important matter the most serious consideration, but I am quite satisfied that the dismissal of John Bromage, allegedly for cause, was not in good faith and was therefore a clear breach of terms of the second agreement.

The dismissal of Tan Eng Hong the first plaintiff clearly comes in on a side wind from the furore raised around John Bromage. The only cause assigned in his case was the employment of illegal labour. It is true that the company had received a warning concerning illegal labour in the form of a letter from Noraini in January. There is no doubt that Bromage and Tan Eng Hong were both concerned with the interviewing of prospective labour. According to Karim this would involve checking the documents and would make them responsible in any case in which such labour was eventually put on board. This was denied by Bromage who said

that, that was purely within Noraini's doormain. My own feeling about that is that it was probably everybody's concern, even if it was primarily the concern of Noraini to deal with the Immigration and Labour people in getting the papers cleared. But the real point is that on Karim's own admission, Tan's complaint was not enough to act upon. I find therefore that the purported dismissals of the first and second plaintiffs were in bad faith and in breach of the second agreement.

The Position of the Fourth Defendant in respect of Breach of Contract

Although as I have said Tan Kee Tai had succeeded in moving back to a position of power in the company and was, by the admission of Karim, one of the person organising its affairs at the time this action was brought, I am not prepared to say that he was a compliant party in the purported dismissals of the first and second plaintiffs. He himself denied that, and on the whole I am prepared to believe him. His responsibility rests upon a different basis. There can be no doubt that it was as a result of his representations to the first and second defendants that the resolution of 10 July was passed. This contains the allegation that he never intended to sell his shares or to "rescind" the first agreement. It declares that the second agreement is null and void as also is the resolution of 10 January, and it goes on to provide that the shares allotted to the first plaintiff shall now be given to the fourth defendant. These are the matters complained of in the pleading at para. 18(A) of the statement of claim. And further on in that pleading giving the particulars of loss and damage caused by the plaintiff it is said as follows:

> (A) By the said Act, the fourth defendant said in motion a chain of events which has alternately led to the third defendant being placed in receivership by the Hongkong and Shanghai Banking Corporation, the termination of the third defendant's major contract, the endangering of the security of the security pledged by the plaintiff to the said bank on behalf of the third defendant's company and the loss of the livelihood for the second and third plaintiffs.

In so far as the livelihood of the second and third plaintiffs is concerned I have said about that I am not satisfied that Tan Kee Tai was a complying party in the dismissals, but as for the rest of the allegations in that para. it seems to me that they adequately describe exactly what happened as a result of his inducement to the defendants. They were persuaded to repudiate the second agreement, an agreement I have found to be valid and subsisting, and they were in breach of that agreement by endeavouring to alter the mandate given to Bromage and the first plaintiff. This together with the dismissals of Bromage and Tan Eng Hong formed the principal causes of the calamitous sequence of events that ensued.

This was not therefore a mere negligent invasion of contractual rights and cases such as *British Industrial Plastics v. Ferguson* [1940] 1 AELR and *Candlewood Navigation v. Mitsui Osk* [1986] AC 1 are not in point.

It is pleaded by the plaintiff that this inducement was wrongful and malicious. Mr. Davidson conceded that perhaps it should have been pleaded merely as wrongful. Myself, I prefer to hold no more than that it was wrongful.

It was wrongful, in particular, in that the fourth defendant did induce the belief that Gleen Ang had offered BB$300,000 for the purchase of the fourth defendant's share and that he had reneged on that promise and that he , the fourth defendant had only been offered 30% of net profits. It was this I am satisfied that induced the first and second defendants to fall in with him and to adopt his view that Bromage was too powerful on the financial side. I am satisfied that he was fully aware of the compliant in - if not the actual instigator of - the resolution to remove the first and second plaintiffs as signatories.

The fourth defendant maintains that he was not aware of the second agreement. That might be true in so far as he may not have been aware of its exact terms, but he must have known that Glenn Ang had come to replace him at the instance of Bromage and that it was very unlikely that he would have done so if there had been any prospect of so drastic an alteration in the running and management of the company as the fettering of Bromage in this way must bring about.

Even before 9 July Tan Kee Tai had become deeply involved with the first and second defendants in considering the company's affairs and its prospects. They were being advised by Francis Chiew. Karim professed to be very close to the fourth defendant and it would be very naive to suggest that he would not be, by then, well aware that an agreement had been made which involved the man who had replaced him in the company. He must have realised that his intervention, which was in effect an attempt to regain a position of power and authority in the company, would be bound to have a drastic effect upon the settled arrangements which had been in operation for something over 8 months following upon his resignation letter. He had been long acquinted with John Bromage. He knew his man. He would certainly have realised that the latter would not tamely submit to being ousted from the dominant position in the company's affairs which he had enjoyed with the compliance of the other parties, including the two directors, for so long. In other words there was bound to be a fight, even to the point of litigation. He must have realized that such an eventuality, at that juncture in the company's affairs, would be at the least highly undesirable, at the worst disastrous, unless the fight could swiftly be won and the backing of the bank maintained. He chose to take the risk.

I cannot believe that his expectation was other than this when he made, what I can only conclude was a bid for renewed power in the company. I have found that he was in bad faith in doing so and thus he must be fixed with the consequences of his interference.

I do not believe that without his intervention the two defendants would have moved to alter the existing state of affairs as radically as they did by the resolution of 10 July, for it was from then on that battle was truly joined. I find that his was the primary influence in inducing that battle.

Position of the First and Second defendants

I have indicated that in the unfolding of these unfortunate events the first and second defendants must be regarded, to some extent, as the dupes of the fourth defendant. Harking back to the principle that the most realistic as well as just and equitable way of dealing with the relationship of these parties under the first agreement is to look upon it as primarily that of partners, they had not been entirely open in their dealings with the other parties to the second agreement. Being part of the small group of people who, for some considerable time had regarded each other as partners in a common venture such candour was to be expected of them, despite the reorganisation of the company and the setting up of a proper share holding structure. They too must bear some part of the responsibility for what eventually occurred.

Because I have found that Tan Kee Tai by his letter of resignation and his subsequent conduct including the withdrawal of his collateral and his failure to protest the contents of the minutes of 6 November with their obvious implication that he was regarded as having effectively severed all connection with the company, the other parties were entitled to conclude that he had in fact totally withdrawn. The subsequent use of the word "rescind" in the second agreement was justified by that letter and course of conduct I hold that what followed was merely a haggle about the quantum of his "goodwill".

For this reason, and not withstanding an elaborate and well articulated argument, I am not persuaded to Mr. Elias's view that Tan Kee Tai possesses an equity which, originating in pre-partnership days, persisted through the partnership agreement and the first agreement and which survived despite his resignation. And in the result, I have found it unnecessary to deal with the authorities to which he has referred me in support of that argument.

There will therefore be judgment for the plaintiffs on their claim generally.

The Relief Sought by the Plaintiffs

Among the several kinds of relief sought in para. 19 of the statement of claim are included requests for Mandatory Orders:

(a) To reinstate the first and second plaintiffs as signatories for the third defendant's accounts.

(b) their reinstatement to the positions they formerly held in the company.

As to (a) it is of course the general rule that the Court will not grant specific performance of contracts of service or employment save in very exceptional circumstances. I believe that such circumstances exist in this case.

On the findings I have made the only conclusion must be that the sole reason for the attempted altering of the signatory mandates was that the directors were led to believe that the second agreement was of no effect. In that they were mistaken. The company had been running very well up until then and apart from any reason the first and second defendants may have had for disapproving of the second plaintiff's personal conduct in his relation with his secretary, assuming that to be of substance, there was never any suggestion that they did not repose confidence in him as the principal executive - some 9% according to Major Karim - of the company's business. Indeed, at one point in the meeting with the BSP officials the second defendant had suggested that even though dismissed, the second plaintiff (Bromage), might return once the fuss about his alleged indiscretion had died down, and engage in business once again. Thus I think it may reasonably be said that whatever personal criticisms might be made of him, he had not lost the confidence of the company.

If this company is to have any prospect of being restored to health then, keeping in mind the high opinion held of John Bromage in BSP and the obvious concern of that company's officials over his dismissal, it seems to me that this may be regarded as one of those rare instances where an order for specific performance ought to be made.

I note that in *Hill v. Parsons* [1972] Ch 305 to which Counsel have referred me there had also been a wrongful dismissal under dire pressure from external sources - in that case a Trade Union. The majority of the Court thought that the order should be made.

I bear in mind the words of Stamp LJ where at p. 323 of the report he said:

> I would be far from holding that in a changed and changing world there can be no new exception to the general rule ...

He was the dissenting Judge, and I repose my own opinion therefore, with the greater confidence, on the opinion of the majority.

This is not a simple master and servant situation. John Bromage was, of course, by virtue of his personal labour-contract an employee of the company. But here his master, the company, in perilous health, would I believe be best served by the restoration of his services. The restoring and harmony between the former partners is I believe a possibility and a most important one.

It is therefore ordered as follows:

Under para. 1(a) of para. 19 of the amended statement of claim:

(1) An order in terms of (I) and (II).

(2) An order in terms of para. 1(b) of para. 19 - save and except that the assessment of such damages, if any, as may be recoverable under such claim is to held in abeyance until such time, if it should occur, as it becomes evident that there is no prospect of the company recovering and coming out of receivership.

Under para. 2(a) of para. 19.

A declaration in the terms there sought.

Under para. 2(b) a declaration in the terms there sought.

Under para. (c) damages to be assessed in like manner as provided under Clause l9(1)(b) *supra*. Such damages to be increased by the Registrar.

Under para. 3 of para. 19: an order in the terms there sought against the third defendant.

Under para. 4(a) and (b) of para. 19 - an order in the terms there sought.

As regards to fourth defendant.

Under para. (5)(a) of para. 19 - damages as there sought to be assessed by the Registrar.

The counterclaims of the first, second and fourth defendants are dismissed with costs.

Costs of the action generally to be the plaintiff if not agreed to be taxed.

Also found at [1992] 2 CLJ 903